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THE COUNTY OF MARIN AND THE COUNTY
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GLADWELL GOVERNMENTAL
SERVICES, INC., a California
corporation,

Plaintiff,

v.

COUNTY OF MARIN, etc., et al.,

Defendants.

Case No. C-04-3332 SBA

**ORDER DENYING MOTION TO
REQUIRE PLAINTIFFS,
COUNTERDEFENDANTS AND THEIR
COUNSEL TO COMMUNICATE
THROUGH COUNSEL**

Date: October 18, 2005
Time: 1:00 p.m.
Judge: Armstrong/Courtroom

COUNTY OF MARIN, a legal subdivision
of the State of California; COUNTY OF
TUOLUMNE, a legal subdivision of the
State of California,

Counterclaimants,

v.

GLADWELL GOVERNMENTAL
SERVICES, INC., a California
corporation, and DIANE GLADWELL, in
her individual capacity,

Counterdefendants.

This matter comes to the Court on Defendants and counterclaimants ("Defendants") the County of Marin and the County of Tuolumne's motion to prohibit Plaintiff and Counterdefendants, Gladwell Government Services, Inc. and Diane Gladwell, and their counsel Kevin Hughes, from contacting Defendants except through their counsel Murphy Austin Adams Schoenfeld LLP. Having read and considered the arguments presented by the parties in their moving papers, the Court finds this matter appropriate for disposition without a hearing. The Court HEREBY GRANTS Defendants' Motion.

I. DISCUSSION

After the Court ruling in favor of Defendant's motion to dismiss Plaintiff's complaint for copyright infringement, Plaintiff and counterdefendant GGS and Diane Gladwell wrote to the Chief Administrative Officer of Marin and Tuolumne asking that the counties consider dropping the litigation. Thereafter, their counsel, Kevin Hughes phoned the offices of individual members of the Board of Supervisors of each County, (*Declaration of Susannah Clark in Support of Motion*) and followed up his calls with a letter to each board member with an offer to settle the matter. Ms. Gladwell also continued to write to Board members. *Declaration of Cary M. Adams in Support of Motion*. Defendants request the Court to prohibit this direct contact, contending it is improper and disruptive of its relationship with its counsel.

The Court has broad authority to "enter appropriate orders governing counsel and the parties." *Haffer v. Temple University*, 115 F.R.D. 506, 512, (E.D. Pa. 1987), citing *Gulf Oil v Bernard*, 452 U.S. 89, 100 (1981) (imposing sanctions for inappropriate contact with class members and prohibiting future inappropriate contact). Generally a party may contact an opposing party, but counsel may not directly contact a represented party. ABA Model Rules of Professional Conduct, Rule 4.2.

California Rules of Professional Conduct is in accord, but exempts communications by counsel "with a public officer, board, committee, or body." Rule 2-100; Formal Opinion No. 1977-43 of the Standing Committee on Professional Responsibility of the State Bar of California.

Defendants contend that this exemption was designed to protect the constitutional right of

1 citizens to petition their government, and that it was not designed to permit counsel to contact
2 represented parties in an attempt to circumvent counsel, or otherwise undermine a public entity's
3 confidence in its counsel. Moreover, Defendants' note that contacting individual Board members
4 may threaten the unintended disclosure of privileged material and cause unintended violations of
5 California's open meeting law known as the Brown Act.

6 The Court will grant Defendants' motion. The Court finds no basis for communicating
7 directly with represented parties in this matter. The Court finds that some of the direct
8 communications by Ms. Gladwell and her counsel have been misleading and apparently intended
9 to undermine a lack of confidence in Defendants' outside counsel.

10 **II. CONCLUSION**

11 For the foregoing reasons, the Court GRANTS Defendants motion. Consequently, during
12 the pendency of this litigation, Gladwell Government Services, Diane Gladwell and their
13 counsel, Kevin Hughes, or any agents acting on their behalf, are prohibited from contacting
14 representatives of Defendants Marin and Tuolumne Counties, except through their counsel of
15 record in this action, Murphy Austin Adams Schoenfeld LLP.

16 **DENIED.**

17 Dated: October 15, 2005

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19 SANDRA B. ARMSTRONG
20 JUDGE OF THE UNITED STATES DISTRICT
21 COURT, NORTHERN DISTRICT OF
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